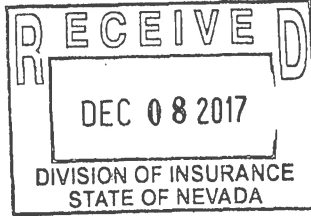


ZERVAS V. USAA

CASE No. 2:18-cv-00051

EXHIBIT A

Complaint, Bates No. USAA000001 – USAA000006



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Steven D. Grierson
CLERK OF THE COURT

A handwritten signature in black ink, appearing to read "Steven D. Grierson".

1 **COMP**
2 **WILLIAM W. McGAHA, ESQ.**
3 Nevada Bar #3234
4 **SCHUETZE & McGAHA, P.C.**
5 601 S. Rancho Drive, Suite C-20
6 Las Vegas, Nevada 89106
7 (702) 369-3225

8 Attorneys for Plaintiff

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 **EMILY ZERVAS,**

12 Plaintiff,

13 vs.

14 **USAA GENERAL INDEMNITY**
15 **COMPANY, a foreign corporation doing**
16 **business in Nevada, DOES I through X**
17 **and ROE CORPORATIONS XI through**
18 **XX,**

19 Defendants.

CASE NO: A-17-765798-C
DEPT. NO: Department 24

20 **COMPLAINT**

21 Plaintiff, **EMILY ZERVAS**, by and through his attorney, **WILLIAM W. McGAHA, ESQ.**
22 of the law firm of **SCHUETZE & MCGAHA, P.C.**, complains of Defendants, and each of them,
23 and alleges as follows:

24 **I.**

25 **GENERAL ALLEGATIONS**

26 1. At all times mentioned herein, Plaintiff, **EMILY ZERVAS** (hereinafter Emily), was
27 a resident of the County of Clark, State of Nevada.

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1 10. As further direct and proximate result of the accident, Plaintiff, has suffered and
2 continues to suffer physical pain, disability, emotional distress, including, but not limited to,
3 intense physical and mental pain, anxiety, loss of sleep and depression, and wage loss. That
4 Plaintiff has suffered certain injuries and damages which are permanent and life long in nature.
5 Plaintiff has suffered a diminishment in earning capacity and has lost income and likely will
6 continue to lose income as a result of the injuries suffered in the accident.

7 11. That Plaintiff's medical expenses, and wage loss, and pain and suffering are
8 covered benefits under the contract of insurance with Defendant. That there is an offset to
9 damages under the policy with the Defendant USAA of \$5,000 for medical payments
10 coverage.

11 12. At the time of the accident, Plaintiff was insured with USAA under policy number
12 0267 17 42G 7101 8 with uninsured motorist policy limits of \$300,000.00 per person, per
13 accident. In addition to the USAA policy, there are other policies of uninsured motorist
14 coverage available to the Plaintiff for the August 3, 2017 loss. The additional policies which
15 afford coverage are through GEICO policy 4420-46-22-95 with policy limits of \$100,000 and
16 STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY policy 085241428 with
17 policy limits of \$100,000.

18 13. That Defendant, including DOES I through X and ROES XI through XX, were and
19 are obligated to compensate Plaintiff for her injuries and damages she sustained in the above
20 mentioned accident by virtue of and consistent with the uninsured motorist coverages
21 identified.

22 14. That the combined policy limits of the three uninsured motorist policies identified
23 total \$500,000. That the compensable injuries and damages to the Plaintiff, as defined under
24 the policies of UM coverage, are in excess of the combined \$500,000 limits.

25 15. That USAA, Geico, and State Farm have all extended UM coverage for the
26 accident of August 3, 2017 and verified that the Plaintiff is an insured for the purposes of UM
27 coverage under each of the policies identified.

28 16. That in the accident in question, the Plaintiff was a fault free passenger and that

1 therefore there are no comparative fault offsets to damages.

2 17. That on or about November 14, 2017, USAA extended an offer of \$180,000 to
3 the Plaintiff to settle her UM claim under the USAA policy as described herein.

4 18. USAA has represented that based upon the accumulated coverages, which total
5 \$500,000, that USAA is entitled to write down it's own coverage applicable to the accident to
6 \$180,000. That by reducing the coverage available under the USAA policy, from confirmed
7 limits of \$300,000 down to \$180,000, USAA saves \$120,000 at the expense of the Plaintiff.

8 18. That this coverage decision was made by USAA with the full understanding
9 that the damages of the Plaintiff exceed the combined policy limits of \$500,000 as described
10 herein.

11 19. That the decision of USAA has no basis in and is contrary to the language and
12 terms of the contract of insurance.

13 20. That the decision of USAA to reduce actual coverage as it has done in this case
14 is contrary to public policy and law in the State of Nevada.

15 21. That pursuant to **NRS 30.040**, jurisdiction of this matter rests with this court.
16 That the Plaintiff is therefore asking this Court to adjudicate the rights of the parties herein
17 under the applicable contract of UM insurance.

18 22. That pursuant to the written contract which affords coverage to the Plaintiff, the
19 Defendant USAA is contractually obligated to extend the full amount of the policy limits, and
20 that no pro rata coverage write down is applicable as damages exceed the collective limits of
21 all the UM carriers.

22 23. That USAA is attempting to create a financial windfall for itself through it's actions
23 in diminishing the coverage which was purchased and otherwise available to the Plaintiff.

24 24. As a further and direct proximate result, Plaintiff was forced to retain an attorney
25 to prosecute the instant action, incurring attorney's fees and costs and is therefore entitled to
26 same from USAA in prosecuting this action.

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1 III.

2 SECOND CAUSE OF ACTION (BREACH OF CONTRACT)

3 25. That Defendant, through its actions, is refusing to tender the full policy benefits
4 even after concluding that the claim of the Plaintiff is in excess of the USAA policy limits and
5 the collective policy limits as set forth above, thereby breaching the contract for uninsured
6 motorist coverage. That the policy benefits which were offered by Defendant were not
7 reasonable, not based upon any policy language, and in violation of the contract. The
8 appropriate policy limits and value of the uninsured motorist claim through USAA is \$300,000.

9 26. That USAA has breached the terms of the contract of UM insurance, and that
10 the Plaintiff is entitled to the benefits. That by virtue of the injuries and damages suffered in
11 the accident described above, the damages of the Plaintiff exceed the value of the coverage.
12 That Plaintiff is therefore entitled to the policy limits.

13 27. That Plaintiff is further entitled to costs and attorney's fees for having to bring this
14 action under these circumstances.

15 28. That to the extent appropriate, Plaintiff will seek to amend her Complaint to
16 conform to discovery as necessary.

17 29. That as a direct and proximate result of Defendants' wrongful conduct, Plaintiff,
18 has suffered and will continue to suffer damages payable under the applicable uninsured
19 motorist policy, in an amount in excess FIFTEEN THOUSAND DOLLARS (\$15,000.00) for the
20 breach of contract claim.

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1 **WHEREFORE**, Plaintiff, expressly reserves the right to amend this Complaint at the time
2 of the trial to include all items of damage not yet ascertained, demands judgment against
3 Defendant, as follows:

- 4 1. For Declaratory Judgment in her favor on the UM contract claim and that the
5 Court declare that Plaintiff is afforded the \$300,000 coverage limits as set out in this Complaint;
6 2. For damages for the breach of the UM contract in the amount of \$300,000;
7 3. For pre- and post-judgment interest as provided by law and contract;
8 4. Reasonable attorney's fees, costs of suit incurred herein, and interest; and
9 5. For such other and further relief as this Court deems proper.

10 **DATED** this 10 day of December , 2017.

11 **SCHUETZE & McGAHA, P.C.**

12 By 

13 WILLIAM W. McGAHA, ESQ.
14 Nevada Bar #3234
15 601 S. Rancho Drive, Suite C-20
16 Las Vegas, Nevada 89106
17 Attorney for Plaintiff